Piney Fork Rail Service & Trackage Rights Agreements/
Apex - Liberty Waste Landfill Project

November 16, 2004

INTRODUCTION

After a preliminary meeting and follow up conversations, on November 8, 2004, Apex Environmental/Liberty Waste Transportation (Liberty) and Ohi-Rail Corporation asked ORDC to consider entering into two separate agreements concerning the ORDC owned Piney Fork line, a Rail Service Agreement, and a Trackage Rights Agreement. The week of November 8, staff, in conjunction with in-house counsel, as well as special outside counsel for Surface Transportation Board (STB) matters, analyzed the agreements and noted requisite changes staff believed would be needed if ORDC Commissioners directed staff to proceed. Staff seeks direction as to whether to, and how to proceed. If directed to move forward, staff requests that the Commission empower its Executive Director to negotiate final agreements in a form substantially similar to the draft documents included herein as Exhibits "A" and "B" and as summarized by this briefing.

BACKGROUND

The State of Ohio owns the Piney Fork Line between Minerva and Hopedale.. The Ohi-Rail Corporation has been the contract operator of the Piney Fork since the state bought it. A parent corporation of Ohi-Rail owns the Minerva Yard as well as the line from Minerva to Bayard. ORDC retains a first right of refusal for this Bayard and Minerva property. Ohi-Rail retains a first right of refusal to purchase the State owned Piney Fork.

Brief History: The State of Ohio purchased the Piney Fork from Conrail in 1982 for $525,000. The Piney Fork includes the line from Minerva (MP 43.5), just south of the Ohi-Rail Minerva Yard, to Hopedale (MP 77.7) as well as the Wolf Run and Pekin Branches. The Piney Fork mainline is in service between Minerva and Amsterdam (MP 65) and on the Pekin Branch. The mainline from Amsterdam to Apex to Hopedale, and the Wolf Run Branch are out of service.

Ohi-Rail connects to Norfolk Southern at Bayard, and to the W&LE at Minerva and Hopedale. A new connecting track at Pan/Carmen could be built to provide an interchange between Ohi-Rail and the Columbus & Ohio River Railroad (C&OR), an Ohio Central Railroad affiliate which operates on the State owned Columbus to Mingo Junction Panhandle line. The tracks of these two railroads are currently grade separated with the Ohi-Rail track bridging over the Panhandle.

The maps included as Exhibit "A" show the entire Piney Fork, as well as Ohi-Rail connecting tracks in Minerva and at the Minerva Yard which are owned by an Ohi-Rail parent company.

The State has made several limited investments in the Piney Fork and Ohi-Rail properties since 1982. In 1990, the State invested $237,000 for safety ties on the northern portion of the line to facilitate a short lived coal movement. In 2000, ORDC invested $359,000 in the Minerva area tracks to facilitate new business in the area and to repair tracks needed to interchange with Norfolk Southern. Ohi-Rail is repaying this $359,000 based on a per carload payback and an increase in car storage fees. In 2002, ORDC provided $50,000 to study the costs of repairing all 31 Ohi-Rail bridges between Bayard and Bergholz for a coal movement which did not materialize, and $20,000 to stabilize select curves between Minerva and Bergholz.

Current Rail Use: On the State owned Piney Fork, Ohi-Rail generates about 150 carloads of commodity traffic a year, the largest rail user being DeNoon Lumber in Bergholz (lumber), with other shippers including Summitville Tile (clay and brick), and Harbison Walker (refractory materials). In addition, Ohi-Rail has a car storage business, storing about 400 cars for various companies. Cars are stored on the state owned Piney Fork and in Minerva Yard.

Ohi-Rail has generated significant new business on its own Minerva area lines and yard. It transloads over 1,000 carloads a year of auto fluff in Minerva Yard and serves another Minerva customer, General Color which generates a small number of cars each year.

Apex Landfill: The Apex landfill, located at MP 68.1 on the out of service southern part of the Piney Fork, is permitted to handle 17 million cubic yards of non-hazardous municipal solid waste (MSW). Preliminary work to construct the landfill has been completed, but millions of dollars more must be invested before the landfill can be opened. Effective rail service to the landfill is a prerequisite to the landfill being opened. Ultimately, the Apex site could be permitted to hold 77 million cubic. yards of waste.

Liberty plans on purchasing and developing the Apex Landfill. Liberty is developing contracts to move East Coast MSW to Apex. MSW would be shipped in containers in small units of 10 to 50 cars. Annual landfill traffic is expected to start at 7,150 carloads in the first full year of operation, and grow to as much as 14,250 carloads per year.

Apex Service Logistics Using C&OR Service: Apex would build its rail infrastructure at MP 68.1 which is 5.2 miles from a possible connecting track with the C&OR at Pan/Carmen (MP 73.3). In addition, Liberty envisions using track two miles north of Apex, or to about MP 66, for staging rail cars for the landfill. Therefore, about 7.3 miles of the Piney Fork, MP 73.3 to MP 66, would be needed for C&OR rail service to Apex. It is anticipated that most initial MSW traffic would originate on Norfolk Southern origins but it is expected that CSX origins will also develop. It is likely that Liberty will in the future seek to move MSW to Apex through the Piney Fork connection to W&LE at Hopedale at southern end of the line, and through the Bayard/Minerva gateway.

Ohi-Rail has determined that using Ohi-Rail trains to deliver the traffic between Carmen/Pan and Apex would not be cost effective for Ohi-Rail or the customer. Ohi-Rail would prefer to allow the C&OR to handle the service all the way to Apex via limited overhead Trackage Rights for a per car fee.

One key issue for potential C&OR service is the cost of the new "Carmen" connection between the Panhandle and the Piney Fork at Pan. An engineer retained by C&OR estimated connecting the two grade separated tracks would require about 2,700 feet of track (1.1% grade) and cost $277,000 to build, not including any land acquisition costs. . American Electric Power owns the property needed to make the connection and is reportedly ready to sell it or provide an easement to the C&OR for track construction.

Another key issue is the rehabilitation of the Piney Fork between the Carmen connection and Apex. A 2004 estimate calls for about $1,200,000 in work to improve this 7.3 mile segment from Pan to Apex.

Proposed Sale of the Piney Fork: Because rail service is a key element for the Apex landfill, for about the last year and a half, Liberty has been investigating various railroad related issues, including long term commitments for the continued operation of the Piney Fork line. In July, 2003, staff presented the concept of ORDC entering into a long term lease with Ohi-Rail to provide Liberty part of the long term security it needs. ORDC's Commissioners rejected the long term lease concept. The Executive Director instructed staff to pursue a sale option rather than any long term lease option.

Since that time, ORDC staff has followed the lead of Ohi-Rail and Liberty to investigate a sale. ORDC has commissioned an appraisal and appraisal review of the line which should be completed by the end of this month. Ohi-Rail is paying for the appraisal and is working with financial partners, including Liberty, on plans to acquire the Piney Fork.

Liberty's plans for Apex are proceeding faster than investigations into a possible Piney Fork sale. Consequently, Ohi-Rail and Liberty approached ORDC asking if ORDC would agree to be a party to Rail

Service and Trackage Rights Agreements. Both are long term agreements.

PROJECT DESCRIPTION

A draft Trackage Rights Agreement is included herein as Exhibit "A". A draft Rail Service Agreement is included herein as Exhibit "B". Both were marked up by ORDC staff after meetings with in-house and STB counsel. To date, ORDC staff has not heard from Ohi-Rail or Liberty that ORDC's changes are acceptable to them. Ohi-Rail and Liberty have not included the C&OR in the two meetings they have had with ORDC to discuss the documents. More talks and negotiations are needed before final documents can be executed. Here are summaries of the major provisions of each document.

Major Provisions of Trackage Rights Agreement

**** Overhead Trackage Rights provided to C&OR from Pan to two miles north of Apex for service to Apex landfill only, and only to handle non-hazardous waste. ORDC staff objected to blanket approach to providing various trackage rights on all other portions of the Piney Fork but is working with Liberty, Ohi-Rail, and C&OR to provide more precise language. More precise language would enable similar trackage rights to those envisioned for Carmen to Apex, including trackage rights for other railroads such as the Wheeling & Lake Erie, on other parts of Piney Fork to facilitate service into Liberty from Minerva/Bayard and from Hopedale.***
**** C&OR can utilize Piney Fork line where trackage rights exist to station/store cars for Apex service so long as C&OR operations do not interfere with Ohi-Rail's ability to serve other customers.***
**** Ohi-Rail storage and other operations will not interfere with C&OR operations.***
**** C&OR pays Ohi-Rail $10 per car; rate adjusted every five years.***
**** Liberty will pay for maintenance of Piney Fork track served by C&OR, or by other railroads granted trackage rights to serve Liberty.***
**** Trackage Rights extinguished when Apex landfill is full.***

Major Provisions of Rail Service Agreement

**** Reiterates Trackage Rights provision and payments for rights from Trackage Rights Agreement.***
**** Reiterates that Liberty will maintain track on which C&OR, or other railroads serving Liberty, operate.***
**** Addresses "free rider" issue of what other shippers utilizing the section of line Liberty maintains must pay for line maintenance. Liberty proposed "proportional" surcharge to new customers. ORDC staff strenuously objects to any new shipper being subjected to a charge from Liberty. ORDC staff believes the railroads must be free to address rate issues with new customers independent of Liberty.***
**** Provides ORDC right of first refusal to purchase Carmen/Pan connection to Panhandle in the event the C&OR divests its interests on the Panhandle or Piney Fork.***
**** Addresses issue of ORDC granting easement to Liberty/Apex to build serving tracks on ORDC Piney Fork property. ORDC staff has no objection to easement/licence so long as it is clearly defined and does not interfere with operations on Piney Fork mainline.***
**** Addresses issue of ORDC renewing Ohi-Rail lease on Piney Fork. ORDC staff has objected to any automatic renewal language preferring to keep ORDC future options open.***

WHY ORDC FUNDING IS NEEDED

No ORDC funding has been requested by Ohi-Rail, Liberty, or the C&OR for the Apex project. It is ORDC's understanding that the rail elements of the Apex project will be privately funded.

PROJECT BENEFITS

* The first phase of the Liberty project would open up about 7.3 miles of the Piney Fork between Carmen/Pan

and Apex which is currently out of service. Good possibility that Liberty traffic in future phases would facilitate rebuilding of entire Piney Fork for Liberty traffic flowing through Minerva and Hopedale..
* There is a small potential shipper located along the portion of the line which would be reopened in the first phase.
* Ohi-Rail would receive significant revenues from the trackage rights agreement which should help it further develop service to its current customers and potential new customers.
* Ohi-Rail would have a new rail connection, the C&OR/Ohio Central which could in the long term be used to move coal along the Piney Fork to the Conesville power plant. Other coal movements could be facilitated by track work needed for future phases of Liberty project.
* Operations on the State owned Panhandle would be more profitable due to increased C&OR rail traffic.
* The Liberty project will create 40 full time and many other part time jobs at the new landfill.
* The Liberty project will generate about $3 million in state and local taxes a year as well as generate about $5 million a year in the local area in capital expenditures, expenses, and salaries.

OTHER CONTRIBUTIONS

Current plans are for track upgrades on the Piney Fork to be privately financed.

SPECIAL CONTINGENCIES

Other parties have not yet indicated whether ORDC staff concerns included in the marked up draft Trackage Rights and Rail Service Agreements are acceptable to them. Further negotiations are definitely needed.

STAFF RECOMMENDATION

Staff recommends that Commissioners provide direction as to how to, and whether to, proceed with negotiating the Trackage Rights and Rail Service Agreements. If Commissioners direct staff to proceed, staff recommends that the Executive Director be empowered to negotiate final agreements in a form substantially similar to the draft documents included herein as Exhibits “A” and “B” and as summarized by this briefing.

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